3399

SUPREME COURT OF THE UNITED STATES.

No. 174.

THE UNITED STATES, APPELLANTS,

vs.

TEODORO AND SECUNDINO ROBLES.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Petition	2	2
Deposition of Jose Abrego	4	3
Deposition of Jose de la Cruz Sanchez	6	4
"B."—Espediente	8	5
Translation of expediente	13	8
Map	between 17 & 18	11
Document H. H. No. 1 annexed to the deposition of Jose Abrego	18	11
Translation of document H. J. T. No. 1 annexed to deposition of Jose Abrego	21	13
Document No. 2 annexed to the deposition of Jose Abrego	24	14
Translation of document No. 2 annexed to deposition of Jose Abrego	27	16
Opinion of the board	29	17
Decree of confirmation	30	18
Secretary's certificate	32	19
Notice of appeal	33	19
Petition	33	20
Answer	34	20
Opinion by his honor Judge M. H. McAllister	35	21
Decree	36	22
Order granting appeal	38	22
Order granting appeal	39	23
Citation	40	23
Clerk's certificate	41	24

GIDEON, Print.

3405

Transcript of the proceedings in case No. 200—Teodoro and Secundino Robles, claimants, vs. The United States, defendant—for the place named "Rincon de San Francisquito."

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this twenty-seventh day of April, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Teodoro and Secundino Robles, for the place named "Rincon de San Francisquito," was presented, and ordered to be filed and docketed with No. 200, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *December* 30*th*, 1852.

In case No. 200, Teodoro Robles and Secundino Robles, for the place named "Rincon de San Francisquito," the deposition of José Abrego, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, with documents marked H. J. T. Nos. 1 and 2, annexed thereto, was filed.

(Vide page 4 of this Transcript.)

SAN FRANCISCO, *March* 15, 1853.

In the same case the deposition of José de la Cruz Sanchez, a witness in behalf of the claimants, taken before Commissioner Hiland Hall, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *August* 10*th*, 1853.

Case No. 200, Teodoro and Secundino Robles, for the place named "Rincon de San Francisquito," called, the counsel for the claimant read the evidence, argued and submitted, and taken under advisement.

SAN FRANCISCO, *November* 29*th*, 1853.

In the same case Commissioner Alpheus Felch delivered the opinion of the board confirming the claim.

(Vide page 26 of this Transcript.)

Petition.

To the U. S. Land Commission for the ascertaining and settling of private land claims in California:

The petitioners, Theodoro Robles and Secundino Robles, respectfully represent to your honorable body, that heretofore, to wit, on the 23d of February, 1841, one José Penna made and presented his petition in writing to Don Castro, the prefect of the first district, soliciting for himself the grant of a tract of land, situate in the present county of Santa Clara, and known under the name of "Rincon de San Francisquito," a description of which will be given hereafter; that said Castro on the 28th of February, 1841, referred said petition to the administrator of the mission of Santa Clara in order to obtain his report thereon, who, on the 1st of March, 1841, referred said petition to the administrator of the mission of Santa Clara in order to obtain his report thereon, who, on the 1st of March, 1841, reported that said land was originally mission land, but was now unoccupied, and could well be granted to the petitioner; that said Castro thereupon transmitted all the proceedings taken in the matter to Governor Alvarado, who, on the 29th of March, 1841, by a decree under his signature, declared said José Peña the lawful owner of said land, and directed the proper document constituting title to be executed and delivered to said Peña; that said Peña having petitioned for a piece of land, including two small tracts of territory heretofore granted to one Francisco Estrada and one Antonio Buelna, purchased on the 19th of March, 1841, and on the 22d of March, 1841, all the right, title and interest which said Estrada and Buelna had or might have had under former grants to them; that on the 29th of March, 1841, a formal grant, under the signature of Governor Alvarado, issued to said José Peña, declaring him the legal owner of the said tract petitioned for, including the two small pieces above referred to. And your petitioners further say, that on the 10th day of September, 1847, said Peña conveyed and transferred all his right, title and interest in and to the land so granted to him to your petitioners, Teodoro Robles and Secundino Robles, who took possession thereof, and have always hitherto been in the quiet and undisputed possession of the same. And your petitioners further state, that the petition of said Peña, reference, report, decree, the various conveyances from Buelna and Estrada, a certified copy of the original grant and map on file in the archives of California, now in the possession of the surveyor general of the United States of America for the State of California, and that duly certified copies and translation of the same, are herewith submitted, and prayed to be made a part of this petition; that the original grant itself, and the conveyance of José Peña to your petitioners, are in the possession of your petitioners, and ready to be offered in evidence whenever required; that the said land is situated in the present

county of Santa Clara, is known under the name of "Rincon de San Francisquito," and is bounded, according to the terms of the grant, by the rancho of Donna Antonia Mesa, by the rancho of Don Antonio Buelna, by the rancho of Donna Guadalupe Briones, and by a range of hills, known as Lomas Divisorias, until they strike the point "Arrastradero," containing square leagues, more or less. And your petitioners further say, that said Peña was in the actual possession of said land from the time said grant issued to him until he made the conveyance above referred to to your petitioners, and that they have since then been in the uninterrupted possession and undisputed ownership thereof, and are not aware of the existence of any title conflicting with or paramount to their own. We therefore claim to be the lawful owners of said land, and pray that your honorable body will confirm and validate their claim and the title thereto.

CLARKE, TAYLOR & BECKH,
Att'ys for Petitioners.

Filed in office April 27th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Jose Abrego.

SAN FRANCISCO, *December 30th*, 1852.

On this day, before Commissioner Harry J. Thornton, came José Abrego, a witness in behalf of the claimants, Theodora Robles and Secundio Robles, petition No. 200, and was duly sworn, his evidence being interpreted by the secretary.

The United States associate law agent was present.

Questions by Claimants.

Question 1st. What is your name, age and place of residence?

Answer. My name is José Abrego; I am forty years old, and reside in the city of Monterey.

Question 2d. Look at the two documents now shown you, the one purporting to be an original grant from Juan B. Alvarado to Don José Peña of the land named Rincon de San Francisquito, dated Monterey, 29th March, 1841, which said document marked Exhibit 1 is attached to your deposition and now filed in this cause; the other a conveyance of said land from José Peña to José Theodoro Robles and Secundino Robles, witnessed and signed by Ignacio Alviso, Eusebio Galindo, Diego Alexander Forbes and Augustin Desforges, dated mission of Santa Clara, 10 of September, 1847, which said document, marked Exhibit 2, is also attached to your deposition and filed in this cause. State if you are acquainted with the handwritings of Juan B. Alvarado, Manuel Jimeno, José Peña, Ignacio Alviso, Eusebio Galindo, Diego Alex. Forbes and Augustin Desforges; and if so, whether the signatures attached to said original documents are the genuine signatures of said persons respectively?

Answer. I see the two documents referred to in your question; I am acquainted with all of the handwritings of Juan B. Alvarado, Manuel Jimeno, José Peña, Ignacio Alviso, D. A. Forbes and Augustin Desforges; I know them to be genuine; Eusebio Galindo has no signature, but put only his mark.

JOSÉ ABREGO.

United States law agent present.

Sworn to and subscribed before me, this 30th December, 1852.

HARRY J. THORNTON,
Commissioner.

Filed in office December 30th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Jose de la Cruz Sanchez.

SAN FRANCISCO, *March 15th*, 1853.

On this day, before Commissioner Hiland Hall, came José de la Cruz Sanchez, a witness in behalf of the claimants, Teodoro Robles et al., petition No. 200, and was duly sworn, his evidence being interpreted by the secretary.

The United States law agent was present.

Questions by Claimant.

Question 1st. What is your name, age and place of residence?

Answer. My name is José de la Cruz Sanchez; my age fifty-six years, and I reside on my rancho of San Rafael, in San Francisquito county.

Question 2d. Do you know the land claimed in this petition? if so, state what you know in regard to its occupancy.

Answer. I have known it some twelve or fourteen years ago; it was then occupied by Manuel Peña, who resided upon it and used it for agricultural and grazing purposes; from him it passed to Alexander Forbes, who lived upon and occupied it in the same way; Forbes sold it to the present occupant, I think, some seven or eight years ago, who have lived upon and cultivated it ever since, up to the present time.

JOSÉ DE LA CRUZ SANCHEZ.

Sworn and subscribed before me.

HILAND HALL,
Commissioner.

Filed in office March 15th, 1853.

GEO. FISHER, *Sec'y.*

Espediente promovido por el ciudadano José Peña en solicitud del paraje conocido con el nombre de Rincon de San Francisquito.

1841.

230.

[2 S. D. K.]

B.—*Espediente.*

S'or Prefecto del Primer Distrito:

José Peña con el debido respeto que debe ante la superioridad de V. S. espone y dice: que des de el dia cuatro de Junio del año de 1837, tiene solicitado el rincon de San Francisquito y despues de haber tomado el sor. goberhador imforme del sor. alcalde del pueblo de San José Guadalupe q'e lo hera Dn. Juan Alvinos, al año entrante solicito el finado Rafael Soto d'ho paraje poniendose este a sembrar sin conocimiento del sr. administrador, y como falleció, el mencionado Soto, la viuda no quizo perder lo que su esposo habia trabajado pero atendiendo el Sor. Dn. José Castro á la primacia que me assiste de mi solicitud y de mis pocos meritos, me propuso que con tal de que yo no perjudicara á la esposa del finado Soto, q'e biera en donde me gustaba que se me amejoraria el sitio, pues d'ha Señora no solicitaba mas de las puras tierras de labor hasta unas paredes viegas, pero se le aumentó cosa de unas trecientas varas mas, que llegan sus limites hasta el ortigal; el Señor Antonio Buelna podra decir si es verdad lo que llebo espuesto. En atencion a lo que se me permitio he solicitado desde el arroyito de las Lleguas hasta colindan con los Sres. Macsimo Martinez, Antonio Buelna, la viuda Antonia Meza, y por la parte del sur con el neofito Gorgonio: pero el S'or Macsimo Martinez, biendo que yo solicite este sitio se presento al gobierno pidiendo el que se le aumentara el terreno con el fin de quitarme seis ú ocho suertes de tierra siendo asi que el parage que poseo hora de dos, pues mal se considera que necesita de mas terreno cuando el aumento que ha conseguido, se lo ha ecsedido á la Señora Guadelupe Briones. En tal virtud de que se me ha quitado el aumento que á d'ho s'or se le ha hecho, solicito de la vondad de V. S. se me aumente el terreno desde el arroyito de las Lleguas que son los limetes, hasta el primer saucelito que queda para la parte del este. Por el diseño que es adjunto puede V. S. quedar enterado de mi solicitud. Por tanto.

A. V. S. pido provea á favor del suplicante de que recibira merced y gracia. Juro no ser de malicia.

S'ta Clara, Feb'o 23, de 1841.

JOSÉ PEÑA.

S. JUAN DE CASTRO, *Feb'o* 28, *de* 1841.

Informe el adm'or del establecimiento de S'ta Clara lo que juzque

combeniente, con referencia de todas las razones q'e espone el solicitante.

CASTRO.

Sr. Prefecto del 1o Distrito:

En cumpli'to al decreto q'e antecede, debo decir q'e el terreno q'e se pretende en esta solicitud, no lo ocupa el estableci'to de mi cargo y ni aun le es necesario, por lo cual puede concedersele al pretendiente, por lo q'e respecta al pedazo de tierra mas de aumento q'e el solicitante pretende, se le puede conceder por no perjudicar á ninguna persona, pues aunque esta comprendido en el diseño de Dn. Franc'o Estrada quedó este sor. en mi presencia de cederselo á Dn. José Peña, V. S. sin embargo resolvera lo q'e crea mas justo.

STA. CLARA.

Marzo 1o de 1841.

IGNO. ALVISA.

[4 S. D. K.]

Ba en papel comun, por no haber en este lugar del sello que corresponde.

Exmo. Sr: Don José Peña en la adjunta instancia solicita de la bondad de V. E. se le conceda el terreno conocido con el nombre de Rincon de S. Francisquito.

Esta Prefectura, visto el informe del adm'r de Sta. Clara, cree puede V. E. si fuere de su superior agrado, beneficiar á Peña, quien p'r sus buenas circunstancias y numerosa familia es digno del patrocinio de V. E.

El aumento q'e tambien solicita me consta q'e Don Francisco Estrada está pronto á cederselo. Esta es la opinion de esta prefectura q'e espresa gustosa á la sup'd de V. E.

JOSÉ T. CASTRO.

[5 S. D. K.]

Monterey, 29 *de Marzo de* 1841.

Vista la peticion con que da principio este esped'te el informe del encargo del estable'to de Sta. Clara, y el del s'or prefecto del 1o distrito, con todo lo demas que se tubo presente y ver convino, de conformidad con leyes y reglamentos de la materia, declaro á D. José Peña dueño en propiedad del paraje conocido con el nombre de Rincon de San Francisquito, colindante con el rancho de D'a Ant'a Meza, con el terreno de D'n Antonio Buelna, con el D'a Guadalupe Briones, con las Lomerias hasta el punto con el nombre de arrastrado y linderos del terreno de D'n Franc'o Estrada, librese el despacho correspon'te tomese razon de el en el libro respectivo y derijan este esped'te á la ex'ma junta departamental para su aprovacion. El S'or D'n Juan B. Alvarado gob'r constitucional departamento de las Californias asi lo mandó, decreto, y firmó, de que doy fé.

[7 S. D. K.]

Digo yo Franc'co Estrada q'e por este me obligo á cederle á D'n José Paña el pedazo mas de aumento de tierra que solicita como consta en su solicitud y diceño y para que conste le doy el presente documento en el establec'to de Sta. Clara á diez y nueve de Marzo de mil ochocientos cuarenta y uno.

FRANCISCO ESTRADA.

Sertifico ser colindante con D'n José Peña del terreno que ocupa por la parte de abajo del Chamisal asi al norte y por la parte de arriba la S'ra Guadalupe Briones, para los fines que contengan doy este en Sta. Clara á los 22 dias del mes de Marzo de 1841.

ANTONIO BUELNA.

Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto D'n José Peña ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Rincon de San Francisquito, colindante con el rancho de D'a Ant'a Meza, con el terreno de D'n Antonio Buelna, con el D'a Guadalupe Briones, con las Lomerias, hasta el punto conocido con el nombre de Arrastradero, hasta colindar con el terreno de D'n Franc'co Estrada: practicadas previamente las dilijencias y averiguaciones concernientes, segun lo dispuesto por leys y reglamentos, usando de las facultades que me son conferidas á nombre de la nacion Mexicana, he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras y sugeto á la aprovacion de la E. junta departamental y á las condiciones siguientes:

1a. Podra sercarlo sin perjudicar las travecias, caminos y servidumbres; lo disfrutara libre, y esclusivamente destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricara casa y estara habilitada.

2a. Solicitara del juez respectivo que le de posecion juridica en virtud de este despacho, por el cual se demarcaran los linderos, en cuyos limites pondra á mas de las mojoneras algunos arboles frutales ó silvestres de halguna utilidad.

3a. El terreno de que se hace mencion es de de ganado mayor poco mas ó menos, segun esplica el diceño respectivo. El juez que le diere la posecion lo hara medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

4a. Si contraviniere á estas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consequencia mando que teniendose por firme y valedero este titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey á veinte y nueve de Marzo, de mil ochocientos cuarenta y uno.

JUAN B. ALVARADO.

MANUEL JIMENO, *S'rio.*

Clara, and that of the prefect of the 1st district, with every thing else that was borne in mind, and was convenient to look into in conformity with laws and regulations upon the matter, I declare Don José Peña owner in fee of the place known by the name of "Rincon de San Francisquito," bordering upon the rancho of Da. Ant'a Meza, with the land Dn. Antonio Buelna, with that of Da. Guadalupe Briones, with the high lands, to the point known with the name of Narastrado, and boundaries of the land of Don Francisco Estrado. Let the proper patent be delivered, enter it in the respective book, and direct this record of proceedings to the most ex't departmental assembly for its approbation. S'or Don Juan B. Alvarado, constitutional governor of the department of both Californias, thus ordered, decreed and signed, which I certify.

Map.

I, Francisco Estrada, say that I hereby oblige myself to cede to Don José Peña the additional piece of land he solicits as it appears in his petition and sketch; and in order to make it evident, I give the present document in the establishment of Santa Clara on the 19th of March, 1841.

FRANCISCO ESTRADA.

[Remark.—The elliptical construction of the Spanish certificate allows of four different translations, of which the following seems to be the best.]

I certify that I am a bordering neighbor with Don José Peña in the land which he occupies on the lower part of the Chamisal towards the north, and with Señora Guadalupe Briones, in that which she occupies on the upper part. For the end which may be convenient, I give this in Santa Clara on the 22 March.

(Signed) ANTONIO BUELNA.

Juan B. Alvarado, Constitutional Governor of the Department of both Californias.

Whereas Don José Peña has solicited, for his personal and his family's benefit, the land known by the name of "Rincon de San Francisquito," bordering upon the rancho of Dn. Ant'a Mesa, and the land of Don Antonio Buelna, and that of Dn. Guadalupe Briones, on the high lands, to the point known by the name of Arrastradero, bordering together with the land of Dn. Francisco Estrada, after previously having taken the proper steps and made investigations according to the requirements of laws and regulations, in exercise of the powers vested in me in the name of the Mexican nation, I have concluded to grant him the mentioned lands, declaring unto him the ownership of it by these present letters, and subject to the approbation of the E. departmental assembly, and to the following conditions:

No 174 Statement had 17 & 18

1st. He may fence it without prejudice to the crossings, roads, and servitudes; he will enjoy it freely and exclusively, appropriating it to the use and culture that may best suit him; but within one year he shall build a house to be inhabited.

2d. He shall solicit of the respective judge to give him juridical possession in virtue of this document, by whom the boundaries are to be defined, on which extremities he will set, besides the landmarks, some fruit trees, or wild ones of some usefulness.

3d. The mentioned land is of de ganado mayor, a little more or less, as the respective sketch shows. The judge who may give the possession will cause it to be measured conformable to ordinance, leaving the surplus that may result to the nation for convenient purposes.

4th. If he should violate these conditions he shall lose his right to the land, which may be denounced by any other party.

Consequently I order that this title-deed being held as firm and valid, it be entered in the respective book, and delivered to the interested party for his security and other purposes.

Given in Monterey on the 29th of March, 1841.

JUAN B. ALVARADO.

MANUEL JIMENO, *Secretary*. *E. C. R. P.*

Filed in office April 27th, 1852.

GEO. FISHER, *Sec'y*.

[*For map see original, between pages* 17 *and* 18.]

Document H. H. No. 1, *annexed to the Depo. of Jose Abrego.*

Sello 1o—Seis Pesos.

Habilitado provisionalmente por la aduana maritima de Monterey para los años de 1839 y 1840.

ANTONIO MA. OSIO.

ALVARADO.

Valga p'a los años de 1841 y 1842.

ALVARADO. ANTONIO MA. OSIO.

{ Ad'a Marit'a de Mont'y. }

Juan B. Alvarado, Gobernador Constitutional del Departamento de las Californias.

Por cuanto D'n José Peña há pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de rincon de San Francisquito colindante con el rancho de D'a Antonia Meza, con el terreno de D'n Antonio Buelna, con el de D'a Guadalupe Briones, con las Lomerias, hasta el punto conocido con el nombre de Arrastradero, hasta colindar con el terreno de D'n Francisco Estrada; practicadas previamente las delijencias y averiguaciones

concernientes, segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas á nombre de la nacion Mexicana he venido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras, sujetandose á la aprovacion de la ex'ma junta departamental y á las condiciones siguientes:

1a. Podra sercarlo sin perjudicar las travesias, caminos, y servidumbres, lo disfrutara libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricara casa y estara habilitada.

2a. Solicitara del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra á mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace mencion es de la estencion que demuestra el diseño que corre en el espediente. El juez que diere la posecion lo hara medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

4a. Si contraviniere á estas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consequencia mando que teniendose por firme y valedero este titulo se tome razon de él en él libro respectivo, y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á veinte y nueve de Marzo de mil ochocientos cuarenta y uno.

JUAN B. ALVARADO.

MAN'L JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro de acientos sobre adjudicacion de terrenos valdios, á fecha 3 v'te.

JIMENO.

El ex'mo señor gobernador dispone se tome razon de este titulo en la prefectura del 1er. distrito.

JIMENO.

En cumplim'to del anterior superior decreto tomese razon.

CASTRO.

Queda tomada razon de este titulo en el libro respectivo á f'ha 2. Prefectura del 1er. distrito, Abril 7, de 1841.

MAN'L CASTAÑARES, *S'rio.*

Queda trasladado este titulo á favor de los S'res Leandro Robles y José Teodoro Robles, segun escritura de venta otorgada por mi hoy dia de la fecha diez de Set'e, 1847.

JOSÉ PEÑA.

EUSEVIO GALINDO, As'a.
AGUSTIN DESFORGES, As'a.

Exhibit No. 1 to deposition of Abrego in No. 200.

H. J. T.

Filed in office, December 30th, 1853.

GEO. FISHER, *Sec'y.*

Translation of Doc. H. J. T. No. 1, *annexed to Depo. of Jose Abrego.*

First Stamp—Six dollars.

Provisionally authorized by the maritime custom-house of Monterey, for the years 1839 and 1840.

(Signed) ALVARADO. (Signed) ANTONIO MA. OSIO.

Revalidated for the years 1841 and 1842.

(Signed) ALVARADO. (Signed) ANTONIO MA. OSIO.

{ Custom-house Stamp. }

Juan B. Alvarado, Constitutional Governor of the Department of the Californias.

Whereas, as Don José Peña has petitioned, for his personal benefit and that of his family, the tract of land known by the name of "Rincon de San Francisquito," bounded by the rancho of Doña Antonia Meza, by the land of Don Antonio Buelna, by that of Doña Guadalupe Briones, by the ranges of the hills as far as to the point known by the name of "Arrastradero," until reaching the land of Dn. Francisco Estrada, all the steps and investigations concerning thereto having been first taken as required by laws and regulations, exercising the powers conferred upon me, in the name of the Mexican nation, I have granted him the said tract, declaring to him the ownership thereof by these presents, to be subject to the approval of the m't excell't departmental board (junta) and to the following conditions:

1st. He may fence it, without injuring the passages, roads and servitudes; may enjoy it freely and exclusively, appropriating it to such use or cultivation as may suit him best; but within one year he shall build a house, and it shall be inhabited.

2d. He shall apply to the proper officer to give him juridical possession by virtue of this title, by whom the boundaries shall be marked out, at the limits of which he shall place, besides the landmarks, some fruit or useful forest trees.

3d. The tract of land of which mention is made is of the extent as shown by the sketch annexed to the espediente. The officer who may give the possession shall cause it to be measured according to ordinance, the surplus thereof to remain to the nation for convenient purposes.

4th. If he shall contravene these conditions he shall forfeit his right to the tract, and shall be liable to be denounced by another.

Wherefore I order that, this title being held firm and valid, entry

thereof be made in the proper book, and the same be delivered to the party concerned, for his safety and other ends.

Given in Monterey, on the 29th day of March, 1841.

(Signed) JUAN B. ALVARADO.

(Signed) MANUEL JIMENO, *Sec'y.*

Entry of this title is made in the book of registry *an* adjudication of vacant lands, at fo. 3 and over.

(Signed) JIMENO.

His excellency señor governor directs that entry of this title be made in the office of the prefect of the 1st district.

(Signed) JIMENO.

In pursuance of the foregoing superior order, let an entry be made.

(Signed) CASTRO.

Entry of this title is made in the proper book, at fol. 2.

Office of the prefect of the 1st district, April 7th, 1841.

(Signed) MAN'L CASTAÑARES, *Sec'y.*

This title is transferred unto Señores Secundino Robles and José Teodoro Robles, according to a deed of sale executed by myself this day, of the date the 10th of September, 1847.

(Signed) JOSÉ PEÑA.

Witness:

(Sig.) EUSIBIO GALINDO.

(Sig.) AUGUSTIN DESFORGES.

I certify that the foregoing is a true and correct translation of a Spanish document being marked "Doc. H. J. T. No. 1, annexed to deposition of José Abrego, taken before Commissioner Harry J. Thornton, in case No. 200, wherein Teodoro and Secundino Robles claim the Rincon de San Francisquito," now on file in this office.

In testimony whereof, I have hereunto signed my name.

Office of the United States land commission to ascertain and settle private land claims in California, at San Francisco, this 19th day of November, A. D. 1853.

Document No. 2, annexed to the Depo. of Jose Abrego.

En la mision de Santa Clara, á los diez dias del mes de Setiembre de mil ochocientos cuarenta y siete, ante mi Ignacio Alvisu, juez de paz auxiliar de la jurisdiccion de San José de Guadalupe, y ante los testigos de mi asistencia con quienes actuo en forma debida, comparecio Dn. José Peña cuya persona, mayor de edad, doy fé conosco; y dijo que por si y á nombre de sus hijos herederos, y susesores, y de quienes de ellos hubiese titulo, voz y causa en cualesquera mayera, vende y dá en venta solemne y enaguacion perpetua todo el terreno comprendido en el titulo de consecion con que fue agraciado por el gobierno departamental, en f'ha veinte y nueve, de Marzo de mil ochocientos cuarenta y uno, á que se refi-

ere, y tambien vende todo el ganado que actualmente posee el otorgante, en d'ho sitio, cuyo numero deberá pasar de dos cientas cabezas, la casa ó casas, huertas corrales, y todo y cada una de las fincas que en d'ho terreno hubiere, á los Señs. José Teodoro Robles y Secundino Robles. Y declara y asegura el enunciado Dn. José Peña que no tiene vendido, empeñado, ni enagenado el dicho sitio, conocido por el nombre del Rincon de San Francisquito, y tanto el terreno como las fincas, y bienes, estan libres de todo gravamen perpetuo, temporal, especial, general, tacito y espreso: y como tal se los vende en precio y cantidad de tres mil y quinientos pesos fuertes, que le tienen entregado los compradores; y el otorgante ha recibido a su entera satisfaccion. Y asi mismo declara y asegura que su justo precio y verdadero valor del enunciado rancho con los bienes y fincas que tiene son los mencionados tres mil y quinientos pesos y que no vale mas: y que en caso que mas valga ó valer pueda del exceso en poca ó mucha suma, lo hace á favor de los compradores y de sus herederos, y succesores, gracia y donacion pura, perfecta é irrevocable, que en derecho se llama intervivos, con insinuacion y demas firmezas legales, con la circunstancia que se lo entregara á los mencionados Sres. José Teodoro Robles y Secundino Robles, el empresado rancho ó terreno con todos sus bienes movientes y semovientes dentro de cinco dias de esta f'ha: Y los compradores, han condescendido.

Y el enunciado Dn. José Peña renuncia las leyes que tratan de contratos compras y ventas, truegues ó cambios; y de otras en que hay lesion en mas ó menos de la mitad del justo precio: Y, que desde el tiempo estipulado en adelante para siempre jamas, se desapodera, quita y aparta y á sus hijos herederos y sucesores del dominio, propiedad, posecion, titulo, voz, recurso y otros cualesquera derechos que le competa al enunciado rancho del Rincon de San Francisquito. Lo cede, renuncia y tras pasa en las personas de los compradores y en quienes les representan para que lo posean, gocen cambien, enajenen, usen y dispongan de ello á su eleccion como de cosa suya adquirida con justo y legitimo titulo y á la obserbancia de todo lo referido, se obliga el referido Dn. José Peña con sus bienes habidos y por haber: y con ellos se somete à los sres. jueces y justicias que de sus causas deban y puedan conocer conforme á d'ro; para què á su cumplimiento le compelan y apremien como por sentencia definitiva, consentida y pasada en cosa juzgada; que por tal la recibe y renuncia todas las leyes que en el caso le favorezcan.

En cuyo testimonio lo firmo conmigo y los testigos en papel simple el dia y mes arriba citados, de que doy fé.

JOSÉ PEÑA.

YGNACIO ALVISU, *Juez Auxiliar.*

Ta

AGUSTIN DESFORGES.

EUSEBIO GALINDO,

DIEGO ALEX'O FORBES.

A fojas siento veinte y dos del libro de asientos aparese la escritura de compra echa por el apoderado Dn. Diego Forbes por los S'res Robles y para resguardo del comprador se estien este sertificado á 14 de Julio de mil ochocientos cuarenta y nueve.

ANT'O MA. PICO, *Alcalde.*

Exhibit No. 2 to deposition of Abrego in No. 200.

H. J. T.

Filed in office Dec'r 30th, 1853.

GEO. FISHER, *Sec.*

Translation of Doc. H. J. T. No. 2, annexed to Deposition of Jose Abrego.

In the mission of Santa Clara, on the 10th day of the month of September, 1847, before me, Ygnacio Albisu, assistant justice of the peace of the jurisdiction of San José de Guadulupe, and before my accompanying witness, with whom I act according to law, appeared Don José Peña, which person, who is full age, I certify to know, and stated, that for himself, and in the name of his children, heirs and successors, and of which of them he may have right, power and authority in any way whatsoever, he hereby sells and grants, in solemn sale and perpetual alienation, all the tract of land mentioned in the title of concession, wherewith he was granted by the department government, dated the 29th day of March, 1841, which the same refers to; and also he hereby sells all the cattle which he, the said J. Peña, actually possesses in the said place, the quantity of which will be above two hundred head, the house or houses, orchard, corrals, and all and every property that there is in the said place, unto Señores José Teodoro Robles and Secundino Robles; and the said Don José Peña hereby declares and assures that he has not sold, mortgaged, or alienated the said place known by the name of "Rincon de San Francisquito," and the land, as well as the possession and property, are free from all incumbrances, perpetual, temporal, especial, general, tacit, and express, and as such he sells them for and in consideration of the sum of three thousand and five hundred hard dollars, which the vendees have already paid to him, and the said J. P. has received to his full satisfaction, and likewise he declares and assures that the said 3,500 are just price and real value of the said rancho, and the possessions and property therein, and they are not worth more, and that in case they should or may be worth more of the overplus, whether in great or small sum, he makes unto the said purchasers, their heirs and successors, a grant and donation, pure, perfect, and irrevocable, which in laws is called interviros, with the production thereof, and other legal securities, with the condition that the said ranch or tract of land, together with all the chattels and cattle stock, shall be delivered within five days from this date unto the said Señores José Teodoro

Robles and Secundino Robles, and the said vendees have agreed thereto. And the said Don José Peña hereby renounces the laws bearing on contracts, purchases and sales, barter or exchange, and others bearing upon frauds in sale more or less of the moiety of the just price, and that from the period stipulated, henceforward and forever, he dispossess himself of, quits and withdraws himself and his children, heirs and successors, from the domain, fee, possession, right, title and resources, and any other rights whatsoever pertaining to the same, the said rancho of Rincon de S. F., which he yields, renounces and transfers unto the persons of the vendees, or whom may act for them, that they may possess, enjoy, barter, alienate, use and dispose thereof at their discernment, as their own property acquired by right and legitimate title; and for the observance of all above mentioned, the said D. J. P. binds himself, and his estate had and to be had, and therewith he submits to the courts and justice, who ought and may cognize of such a case according to law, in order that, for the fulfilment thereof, they may judge and compel him as by a definitive judgment, and passed to a tried case, and as such he shall admit it, and renounce such law which may favor him in the case.

In testimony whereof, he signed his name hereunto with myself and the witnesses, it being on common paper, the day and month first above mentioned, which I attest.

(S'g) JOSÉ PEÑA.

(S'g) IGNACIO ALVISO,
Assis't Justice of Peace.

Witness: Witness:
EUSEBIO GALINDO, AGUSTIN DESFORGES.
(S'g) DIEGO ALEX. FORBES.

At folio 122 of the book of reg'ty there appears the deed of purchase made by Don Diego Forbes, attorney of Sen's Robles, and for the safety of the vendee this certificate is made the 14th day of July, 1849.

(Sig.) ANTONIO MA. PICO, *Alcalde.*

Opinion of the Board.

TEODORO ROBLES and SECUNDINO ROBLES vs. THE UNITED STATES. } For the tract of land called "Rincon de San Francisquito."

The petitioners allege that the land for which they ask a confirmation was granted by the government to José Peña, through whom they claim title by his conveyance to them. They have given in evidence a traced copy of the espediente, showing that said Peña presented his petition for the land to the prefect of the first district, February 23d, 1841; that information was obtained in the usual

manner and transmitted to Governor Alvarado, who, on the 29th March of the same year, made the concession and issued the grant, the original of which, duly proved, is filed in the case. There is no evidence of approval by the departmental assembly, nor is there any proof of juridical possession.

The deposition of José de la Cruz Sanchez shows that said Peña occupied the premises, residing thereon, and using the land for agricultural and grazing purposes, as far back, at least, as the year in which the grant was made; that Alexander Forbes succeeded him and lived on the premises, occupying it in the same way, and that some seven or eight years ago the present claimant purchased the property of said Forbes, and have lived upon and cultivated it ever since. A deed of conveyance of the land made by said Peña, directly to the claimant in the case, is introduced and proved, bearing date the 10th day of September, 1847.

The land granted is described by metes and bonds, and by reference to the map and to the limits of the surrounding tracts mentioned in the grant as boundaries, it is believed a survey of it can be made with little difficulty.

The claim appears to be meritorious, and it is therefore confirmed.

Filed in office November 29th, 1853.

GEO. FISHER, *Sec'y.*

Decree of Confirmation.

TEODORO ROBLES and SECUNDINO ROBLES
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioners is valid, and the same is therefore hereby confirmed. The land of which confirmation is hereby made is the place known by the name of "Rincon de San Francisquito," being the same on which said claimants now reside, and bounded and described as follows, to wit: Bounded on the northwardly side by the rancho of Doña Antonia Mesa, by the land of Don Antonio Buelna, and by that of Doña Guadalupe Briones; on the west side by the range of hills from the land of said Guadalupe Briones to the point known by the name of "Arastradero;" on the south side by said "Arastradero" until it reaches the land of Francisco Estrada; and thence by said Estrada's north line to the east end of the same; and on the east side by the bay to the south line of the rancho of said Antonia Mesa first mentioned, at the southeast corner thereof. The limits of the land hereby confirmed to be subject to the settlement and location of the said lines of the ranchos and lands above mentioned, as the same has been defined and settled by juridical survey, or as the same shall be defined and settled under confirmations by this commis-

sion, or, in default of both, as the same were understood and settled at the time of the grant of the premises hereby confirmed to José Peña on the 29th day of March, 1841. Reference to be had to said grant, and also to the map or plan of said premises on file in this case, attached to and forming a part of the traced copy of the espediente, duly certified from the office of the United States surveyor general for California.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office November 29th, 1853.

GEO. FISHER, *Secretary.*

Secretary's Certificate.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-seven pages, numbered from 1 to 27, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 200 on the docket of the said board, wherein Teodoro and Secundino Robles are claimants against the United States, for the place known by the name of "Rincon de San Francisquito."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, California, this twenty-third day of August, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Endorsed: Filed August 23d, 1854.

JOHN A. MONROE, *Clerk.*

Notice of Appeal.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 30th November, 1854.

TEODORO AND SECUNDINO ROBLES
vs.
THE UNITED STATES.
} 200.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day

of August, 1854, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Endorsed: Filed January 8th, 1855.
JOHN A. MONROE, *Clerk.*

Petition.

To the honorable District Court of the United States in and for the northern district of California.

THE UNITED STATES, Appellants,
vs.
TEODORO AND SECUNDINO ROBLES. } No. 81.

The petition of the United States by their attorney represents, that this cause is an application for a review of the decision of the board of commissioners whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court, on the 1st day of January, 1855; that a notice of appeal was filed on the first day of January, 1855, and that the land claimed lies in the said district; that the said claim is invalid.

Wherefore the appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully, &c.,
A. GLASSELL,
Ass't U. S. Att'y.

Endorsed: Filed June 27th, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Answer.

District Court of the United States, northern district of California.

THE UNITED STATES, Appellants,
vs.
TEODORO y SECUNDINO ROBLES. } No. 81.—L. C. docket No. 200.

Teodoro and Secundino Robles, appellees and claimants in the above entitled case, in answer to the petition therein filed, aver and say, that their title to the land therein claimed is valid.

They therefore pray that the decision of the board of land commissioners be affirmed, and the title of the said claimants be decreed to be valid.

J. CLARKE, *Att'y for Claimants.*

Endorsed: Filed June 27th, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

3412

Opinion by his honor Judge M. H. McAllister.

THE UNITED STATES, Appellants,
vs.
TEODORO ROBLES and SECUNDINO ROBLES, Appellees.

The appellees claim through a mesne conveyance from Alexander Forbes, whose title is derived from one Don José Peña, the grantee.

The grant was issued to the said Peña by Governor Alvarado on the 29th March, 1841, and was for a tract of land known by the name of "Rincon de San Francisquito," bounded by the rancho of Doña Antonio Meza, by the land of Doña Guadalupe Briones, by the ranges of the hills as far as to the point known by the name of "Arastradero," until reaching the land of Don San Francisco Estrada. The third condition describes the land to be of the extent as shown by the sketch annexed to the espediente.

The genuineness of the grant, the original of which was before the commissioners, is established, and the parol testimony ascertains the occupancy of the land by the grantee from the year in which the grant was issued, its subsequent occupation by Forbes at the time of his purchase from the grantee until some eight years ago, when latter sold to the appellees, since which period they have lived on and cultivated the premises. A deed of conveyance from Forbes for the property is in evidence. The only objections to the caim are, the want of approval by the departmental assembly, and the failure to obtain judicial possession.

These cannot, under the circumstances of this case, avail to defeat the claim. The decision of the commissioners must be therefore affirmed.

Decree.

THE UNITED STATES
vs.
TEODORO ROBLES and SECUNDO ROBLES. } No. 81.

Stated term, October 29th, 1855.

Appeal from the final decision of the commissioners to ascertain and settle private land claims in California.

This cause coming on to be heard at a stated term of this court on an appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of the proceedings and decision, and the papers and evidence on which said claim was founded; and it appearing to the court that such transcript has been duly filed according to law, and counsel for both parties having appeared, it is ordered, adjudged

and decreed, that said decision be affirmed; and it is further ordered, adjudged and decreed, that the claim of the appellees be confirmed to the tract of land known as "Rincon de San Francisquito," being the same on which appellees now reside, and bounded and described as follows, viz: On the northwardly side by the rancho of Doña Antonia Mesa, by the land of Don Antonio Buelna, and by that of Doña Guadalupe Briones; on the west side by the range of hills from the land of said Guadalupe Briones to the point known as "Arastradero;" on the south side by said "Arastradero" until it reaches the land of Francisco Estrada; and thence by said Estrada's north line to the east end of the same; and on the east side by the bay to the south line of the rancho of said Antonia Mesa, first mentioned, at the southeast corner thereof. The limits of the land hereby confirmed to be subject to the settlement and location of the said line of the ranchos and lands above mentioned as the same have been defined and settled by juridical survey, or as the same have been defined and settled under confirmations by the said board of commissioners and by this court, *as*, in default of both, as the same were understood and settled at the time of the grant of the premises hereby confirmed to José Peña on the 29th day of March, 1841. Reference to be had to said grant, and also to the map or plan of said premises on file in this case, attached to and forming a part of the traced copy of the espediente, duly certified from the office of the United States surveyor general for California.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed October 29th, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order Granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
TEODORO AND SECUNDINO ROBLES. } D. C. 81.—L. C. 200.

In this case, on application of the United States attorney, made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered at the present term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions and pro-

ceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed March 24th, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order Granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
TEODORO AND SECUNDINO ROBLES. } D. C. 81.—L. C. 200.

In this case, on application of P. Della Torre, esq., U. S. attorney, it is ordered that an appeal in behalf of the United States from the final decision of the court, rendered in said court at the June, 1855, term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay, and the appellants are ordered to serve the usual citation according to law.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed July 1st, 1858.

W. H. CHEVERS, *Clerk.*

United States of America to Teodoro and Secundino Robles, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in Washington on the first Monday in December next, pursuant to an order of appeal granted on this thirtieth day of June, A. D. 1858, in open court, by the district judge of the district court of the United States for the northern district of California, in a certain suit, wherein the United States are plaintiffs and you are defendant, on appeal, to show cause, if any there be, why the decision in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal at San Francisco, this thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-eight. OGDEN HOFFMAN, [SEAL.]
U. S. Dist. Judge.

Endorsed: Due service of copy within admitted this 2d day of July, 1858. J. CLARKE, *Att'y for Clmt.*

Filed July 2, 1858.

W. H. CHEVERS, *Clerk.*